

803 KAR 2:120. Citations.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and administrative regulations are adopted, formulating the procedure to be followed by the commissioner when a citation has been issued. The function of this administrative regulation is to spell out with clarity the procedure which must be followed by the compliance officers both as to form and content of the citation. Also, the administrative regulation makes clear the procedure to be followed by the Commissioner of the Department of Workplace Standards in reviewing the inspection conducted by the compliance officers.

Section 1. Citations. The Commissioner of the Department of Workplace Standards shall review the inspection report of the compliance safety and health officer. If, on the basis of the report the commissioner believes that the employer has violated a requirement of KRS Chapter 338, or any standard, rule or order promulgated pursuant to KRS Chapter 338, he shall issue to the employer a citation indicating the violations. An appropriate citation shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection.

Section 2. Content of Citation. A citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of KRS Chapter 338, standard, rule, administrative regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

Section 3. Citations Issued for Requested Inspections. If a citation is issued for a violation alleged in request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

Section 4. Informal Review of Inspection. After an inspection, if the commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), the informal review procedures prescribed in 803 KAR 2:090, Section 2, shall be applicable. After considering all views presented, the commissioner shall either affirm his determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

Section 5. Citation. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of KRS Chapter 338, or any standard, rule, order or administrative regulation filed pursuant thereto, has occurred unless there is a failure to contest as provided for in KRS Chapter 338 or, if contested, unless the citation is affirmed by the review commission. (OSH 111; 1 Ky.R. 161; eff. 12-11-74; Am. 3 Ky.R. 250; eff. 10-6-76; TAm eff. 8-9-2007; TAm eff., 9-8-2011.)